

## **§ 85.105**

### **§ 85.105 Does this part apply to me?**

Portions of this part (see table at § 85.25(b)) apply to you if you are a(n)—

(a) Person who has been, is, or may reasonably be expected to be, a participant or principal in a covered transaction;

(b) Respondent (a person against whom the Department of Education has initiated a debarment or suspension action);

(c) ED debarring or suspending official; or

(d) ED official who is authorized to enter into covered transactions with non-Federal parties.

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455, Pub. L. 103-355, 108 Stat. 3243 at 3327.

### **§ 85.110 What is the purpose of the nonprocurement debarment and suspension system?**

(a) To protect the public interest, the Federal Government ensures the integrity of Federal programs by conducting business only with responsible persons.

(b) A Federal agency uses the nonprocurement debarment and suspension system to exclude from Federal programs persons who are not presently responsible.

(c) An exclusion is a serious action that a Federal agency may take only to protect the public interest. A Federal agency may not exclude a person or commodity for the purposes of punishment.

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455, Pub. L. 103-355, 108 Stat. 3243 at 3327.

### **§ 85.115 How does an exclusion restrict a person's involvement in covered transactions?**

With the exceptions stated in §§ 85.120, 85.315, and 85.420, a person who is excluded by the Department of Education or any other Federal agency may not:

(a) Be a participant in a(n) ED transaction that is a covered transaction under subpart B of this part;

(b) Be a participant in a transaction of any other Federal agency that is a covered transaction under that agen-

## **34 CFR Subtitle A (7-1-06 Edition)**

cy's regulation for debarment and suspension; or

(c) Act as a principal of a person participating in one of those covered transactions.

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455, Pub. L. 103-355, 108 Stat. 3243 at 3327.

### **§ 85.120 May we grant an exception to let an excluded person participate in a covered transaction?**

(a) The ED Deciding Official may grant an exception permitting an excluded person to participate in a particular covered transaction. If the ED Deciding Official grants an exception, the exception must be in writing and state the reason(s) for deviating from the governmentwide policy in Executive Order 12549.

(b) An exception granted by one agency for an excluded person does not extend to the covered transactions of another agency.

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455, Pub. L. 103-355, 108 Stat. 3243 at 3327.

### **§ 85.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?**

If any Federal agency excludes a person under its nonprocurement common rule on or after August 25, 1995, the excluded person is also ineligible to participate in Federal procurement transactions under the FAR. Therefore, an exclusion under this part has reciprocal effect in Federal procurement transactions.

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455, Pub. L. 103-355, 108 Stat. 3243 at 3327.

### **§ 85.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?**

If any Federal agency excludes a person under the FAR on or after August 25, 1995, the excluded person is also ineligible to participate in nonprocurement covered transactions under this part. Therefore, an exclusion under the